

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

AKAL SECURITY, INC.

Employer

and

Case 28-RC-6141

**UNITED GOVERNMENT SECURITY
OFFICERS OF AMERICA, LOCAL #823
(UGSOA)**

Petitioner

and

**INTERNATIONAL UNION, SECURITY
POLICE AND FIRE PROFESSIONALS
OF AMERICA (SPFPA)**

Intervenor

DECISION AND DIRECTION OF ELECTION

The United Government Security Officers of America, Local #823 (Union) seeks an election within a unit comprised of all full-time and regular part-time corrections and detention officers, sergeants, lieutenants, and dispatchers employed by Akal Security, Inc. (Employer), at the United States Immigration and Naturalization Service (INS) detention facility located in Florence, Arizona. The International Union, Security Police and Fire Professionals (Intervenor) at hearing contended that the “Anti-Raid” agreement (Agreement) between the Union and the Service Employees International Union (SEIU) establishes a direct or indirect affiliation between the two entities and, therefore, bars the Union from representing the employees under Section 9(b)(3) of the Act. The Intervenor further asserted that the Union’s assistance to the National Union of Security Professionals (NUSP), a union that the Intervenor contends is not eligible to represent guards under the Act, also disqualifies the Union from being certified. The Union denied that it is a direct or indirect affiliate of the SEIU. Furthermore, the Union avers that the Agreement is simply one in which neither it nor the SEIU will seek to organize employees that are actively being organized by the other entity. The Employer took no position with respect to the Intervenor’s contention. In its post-hearing brief, the Intervenor withdrew its contentions with respect to the status of the Union. For the reasons noted below, I agree that the Union is not barred from representing employees under Section 9(b)(3) of the Act. The parties’ stipulated, and I find, that an appropriate unit

consists of all full-time and regular part-time custody officers working for the Employer at the INS detention facility in Florence, Arizona.

As evidenced at the hearing and in the briefs, the sole issue is whether under Section 9(b)(3) of the Act, the Union may be certified as the exclusive collective-bargaining representative of the Employer's custody officers at the INS detention facility in Florence, Arizona. For the reasons discussed in detail below, I conclude that the Union is not a direct or indirect affiliate of the SEIU and is, therefore, not barred by the Act from representing the employees in the unit.

DECISION

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. **Hearing and Procedures:** The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. **Jurisdiction:** The Employer, Akal Security, Inc., a New Mexico corporation, with an office and place of business located in Santa Cruz, New Mexico, provides security services to the INS detention facility in Florence, Arizona. The parties have stipulated, and I find, that during the 12-month period ending January 14, 2003, the Employer, in the course and conduct of its business operations described above, performed services valued in excess of \$50,000 directly to the INS facility in Florence, Arizona, and other facilities located outside the State of Arizona. In these circumstances, I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and is subject to the jurisdiction of the Board.

3. **Claim of Representation:** The Union is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer. The Intervenor is a labor organization within the meaning of Section 2(5) of the Act.

A. Background

The parties stipulated to, and I so find, the following facts: On or about January 1, 2003, the Employer assumed a Federal Government contract to provide security officers at the INS detention facility in Florence, Arizona. Prior to January 2003, the Intervenor represented the security officers. In or about December 2002, the Intervenor requested that the Employer recognize and bargain with it when the Employer assumed the responsibilities of the Government contract. On or about January 10, 2003, the Employer recognized the Intervenor as the security officers' exclusive collective-bargaining representative.

The Union is a national union that represents guards. It does not represent non-guards. The Union determines its own operations and policies and administers its collective-

bargaining agreements with various employers without advice or assistance from the SEIU or any other labor organization. There is no financial interdependence between the Union and the SEIU.

B. The Union's Anti-Raid Agreement with the SEIU

On October 3, 2002, the Union and the SEIU entered into the Agreement entitled "ANTI-RAID AGREEMENT BETWEEN THE SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO AND THE INTERNATIONAL UNION OF UNITED GOVERNMENT SECURITY OFFICERS OF AMERICA." The Agreement states, among other things, that:

The Service Employees International Union, AFL-CIO (SEIU) and the International Union of United Government Security Officers of America (UGSOA) agree to the following terms in order to raise standards for Security Officers and to strengthen the labor movement by avoiding inter-union jurisdictional disputes.

It is expressly understood and agreed that this Agreement or any actions of the SEIU and UGSOA related to this Agreement do not in any manner infer, or constitute any type of change, modification, or alteration in any manner, form or purpose, of either party's Constitution or By-Laws.

The purpose and intent of this Agreement is limited solely and exclusively to matters referenced in this Agreement, and does not constitute in any manner a direct or indirect affiliation of the parties. (Emphasis added.)

Paragraph 2 of the Agreement states:

The parties recognize that where either SEIU or UGSOA is the certified or recognized collective bargaining representative or where either SEIU or UGSOA is actively seeking to organize a group of workers, the other union will not seek to organize those employees or support efforts by another union to organize those employees.

The Agreement does not interfere with the Union's independence with respect to negotiating contracts or bargaining for units of employees it represents. In addition, the Agreement prohibits the SEIU from being involved in the administration of any of the Union's existing collective-bargaining agreements.

C. The Union's Assistance to the NUSP.

At hearing, the Union's International senior vice-president testified that the SEIU solicited the Union's help for an NUSP organizing effort unrelated to the instant matter. The record reflects that the Union's assistance to NUSP consisted solely of the International's president appearing on videotape for distribution in which he spoke of, among other things, his personal experiences as one of the Intervenor's local presidents.

D. Legal Analysis and Determination

Based upon the case law and reasoning set forth below, I find, consistent with the current position of the parties, that the Union is not a direct or indirect affiliate of the SEIU and, therefore, may be the certified collective-bargaining representative of the Employer's custody officers at the INS detention facility in Florence, Arizona.

Section 9(b) of the Act states, in pertinent part:

(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit or subdivision thereof: Provided, That the Board shall not . . . (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership **or is affiliated directly or indirectly with an organization which admits to membership employees other than guards.** (emphasis added)

The Board has established that the non-certifiability of a guard union must be shown by definitive evidence. *Id.*, citing *Children's Hospital of Michigan*, 317 NLRB 580, 581 (1995), enfd. sub nom. *Henry Ford Health System v. NLRB*, 105 F.3d 1139 (6th Cir. 1997). The Board has found an "indirect affiliation" between a guard union and a non-guard union where the "extent and duration of [the guard union's] dependence upon [the non-guard union] indicates a lack of freedom and independence in formulating its own policies and deciding its own course of action." *U.S. Corrections Corp.*, 325 NLRB 375, 376 (1998), quoting *Magnavox Co.*, 97 NLRB 1111, 1113 (1952). Mutual sympathy, common purpose, and assistance between such unions are not, standing alone, sufficient to show an indirect affiliation. *Wackenhut Corp. v NLRB*, 178 F.3d 543, 554 (D.C. Cir. 1999), quoting *International Harvester Co.*, 145 NLRB 1747, 1749 (1964).

In the instant matter there is no definitive evidence to establish that the Union is an indirect affiliate, let alone a direct affiliate, of the SEIU. The Agreement explicitly states that it "... does not constitute in any manner a direct or indirect affiliation of the parties." In addition, the Agreement has no impact on the Union's independence in directing its operations and formulating its own policies in deciding its own course of action. Moreover, the Agreement prohibits the SEIU from participating in the administration of any of the Union's existing collective-bargaining agreements. Furthermore, there is no financial interdependence between the two entities. Finally, the Agreement, by its explicit terms appears to be nothing more than a document utilized by the Union and the SEIU to promote the common purpose of both entities by conserving resources in their organizational campaigns.

I also find the Union's minimal assistance to the NUSP does not bar it from being certified. As noted above, the evidence adduced at the hearing by the Intervenor consisted solely of the International Union's participation in the filming of a videotape for distribution on behalf of the NUSP. Accordingly, I find that this single incident is insufficient to disqualify the Union from being certified to represent the employees. See *International Harvester Co.*, supra. (Board has historically refused to find indirect affiliation where it appeared that advice and assistance received by guard union from non-guard union had terminated.) In sum, there is no statutory prohibition evident from the record before me which would preclude the Union from being certified by the Board to serve as the exclusive representative of the Unit found appropriate herein.

4. **Statutory Question:** A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. **Unit Finding:**

The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full and regular part-time custody officers performing guard duties as defined in Section 9(b)(3) of the National Labor Relations Act, as amended, employed by Akal Security, Inc., at the Immigration Naturalization Service, Florence, Arizona facility.

EXCLUDED: All office clerical employees, professional employees, managers and supervisors as defined in the Act.

There are approximately 180 employees in the unit found appropriate.

DIRECTION OF ELECTION

I direct that an election by secret ballot be conducted under the supervision of the undersigned among employees in the above unit at a time and place that will be set forth in

the notice of election, that will issue soon, subject to the Board's Rules and Regulations. The employees who are eligible to vote are those in the unit, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off; employees who have been, and continue to be, engaged in an economic strike for less than 12 months before the election date and who retained the status as such during the eligibility period, and their replacements; and those in military services of the United States Government, but only if they appear in person at the polls. Employees in the unit are ineligible to vote if they have quit or been discharged for cause since the designated eligibility period; if they engaged in a strike and have been discharged for cause since the strike began and have not been rehired or reinstated before the election date; or if they have engaged in an economic strike for more than 12 months before the election date and have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by:

**UNITED GOVERNMENT SECURITY OFFICERS OF AMERICA,
LOCAL #823 (UGSOA);**

or

**INTERNATIONAL UNION, SECURITY,
POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA);**

or neither labor organization.

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues before they vote, all parties in the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, I am directing that within seven (7) days of the date of this Decision, the Employer file with the undersigned, two (2) copies of an election eligibility list containing the full names and addresses of all eligible voters. The undersigned will make this list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, the undersigned must receive the list at the NLRB Region 28 Office, 2600 North Central Avenue, Suite 1800, Phoenix, Arizona, 85004, on or before February 20, 2003. No extension of time to file this list shall be granted except in extraordinary circumstances. The filing of a request for review shall not excuse the requirements to furnish this list.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. The Board in

Washington must receive this request by February 27, 2003. A copy of the request for review should also be served on the undersigned.

DATED at Phoenix, Arizona, this 13th day of February 2003.

/s/Cornele A. Overstreet
Cornele A. Overstreet, Regional Director
National Labor Relations Board - Region 28

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